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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,965	11/13/2003	Junichi Ogikubo	450100-04811	9424
7590 03/19/2008				
William S. Frommer, Esq. FROMMER LAWRENCE & HAUG LLP 745 Fifth Avenue New York, NY 10151				
EXAMINER				
DURNFORD-GESZVAIN, DILLON				
ART UNIT		PAPER NUMBER		
2622				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/712,965

**Applicant(s)**

OGIKUBO, JUNICHI

**Examiner**

DILLON DURNFORD GESZVAI

**Art Unit**

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Claims **1-14** are pending and claim **13** is amended.

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Response to Arguments***

2. Applicant's arguments, see page 7 of Remarks, filed 2/8/2008, with respect to the rejection of claims **6** and **13** under 35 USC 112 have been fully considered and are persuasive. The rejection of the claims has been withdrawn.
3. Applicant's arguments with respect to claims **1-14** have been considered but are moot in view of the new ground(s) of rejection.

Applicant has filed a certified translation of the foreign document that the instant application relies upon for priority. This has overcome the rejection of the claims under 35 USC 102(e) over US 2004/0081437 (Asada). Therefore, the rejection over the Asada is withdrawn and will be replaced with a rejection under 35 USC 102(b) based on the publication of the PCT upon which Asada claimed priority, with the US publication as a translation. An actual translation of the WIPO document will follow in a subsequent action.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims **1, 2, 4, 5, 7-9, 11, 12** and **14** are rejected under 35 U.S.C. 102(b) as being anticipated by WO 02/39737 (Asada) (with US 2004/0081437 (Asada) being used cited to as a translation).

As to claim **1**, Asada teaches an imaging apparatus comprising:

an imaging device 101 (see Fig. 27) for reading a signal captured by an image pickup device to generate an image signal based on the image captured by said image pickup device (see [0124]);

a signal processor 101 for generating image data of a predetermined frame rate based on said generated image ([0124]);

a controller (not shown) for controlling said imaging device or said signal processor to set a variable frame rate of said image data to a set frame rate, and for generating associated information for indicating at least said frame rate ([0124] and note that the frame rate is set in accordance with signal 102 and generates associated information as rate information in the recording unit 103); and

a transmitter 103 for combining said associated information with said image data to transmit combined data ([0124]).

As to claim **2**, Asada further teaches the imaging apparatus according to claim **1**,

wherein said controller sets the variable frame rate of said image data by altering a reading frequency at which the captured signal is read from said image pickup device ([0124]).

As to claim **4**, see the rejection of claim **1** and note that Asada further teaches the imaging apparatus of claim **1**, wherein said controller sets the variable frame rate of said image data by altering a reading frequency at which the captured signal is read from said image pickup device and by controlling said signal processor to add said image data on a frame basis ([0124] and [0125])

As to claim **5**, see the rejection of claim **1** and note that Asada further teaches the imaging apparatus according to claim **1**, wherein said controller adds a sub-frame number to each of the frames of said set frame rate included within one frame period of a reference frame rate and includes said sub-frame number in associated information ([0129]).

As to claim **7**, see the rejection of claim **1** and note that Asada further teaches the imaging apparatus of claim **1**, further comprising a signal recording apparatus 103 for receiving said combined associated information and said image data to record the combined associated information and image data on a recording medium ([0133]).

Claims **8**, **9**, **11**, **12** and **14** are method claims that correspond to the apparatus

claims **1, 2, 4, 5** and **7** respectively and therefore are rejected on the same grounds but drawn to a method.

***Claim Rejections - 35 USC § 103***

2. Claims **3** and **10** are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 02/39737 (with US 2004/0081437 (Asada) being used cited to as a translation) in view of US 7,047,305 (Brooks).

As to claim **3**, see the rejection of claim **1** and note that what Asada does not teach is that the frame rate is changed through frame-skipping. However, Brooks teaches a video apparatus for changing the frame rate of an output video by frame-skipping (Column 7 lines 51-67). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used frame-skipping to vary the frame rate of Asada using the method of Brooks as this would allow for a preview image to be shown at a higher frame rate than that used to store images allowing memory space to be conserved while still allowing for accurate preview information to be obtained.

Claim **10** is a method claim that corresponds to the apparatus claim **3** and therefore is rejected on the same grounds but drawn to a method.

5. Claims **6** and **13** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0081437 (Asada) in view of US 5,359,464 (Wilkinson).

As to claim 6, Asada is silent regarding recording an audio signal. However, Wilkinson teaches a recording apparatus for recording images at various frame rates and recording audio at a corresponding sampling rate (Column 3 lines 48-62 and Column 4 lines 8-20). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have recorded an analog audio signal at a sampling frequency based on the set frame rate as is done in Wilkinson as this would allow for the video and audio to be read out by the apparatus of Asada in view of Wilkinson.

Claim 13 is a method claim that corresponds to the apparatus claim 6 and therefore is rejected on the same grounds but drawn to a method.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DILLON DURNFORD GESZVAI whose telephone number is (571)272-2829. The examiner can normally be reached on Monday through Friday 8 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lin Ye can be reached on (571) 272-7372. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dillon Dumford-Geszvain

3/4/2008

/Lin Ye/  
Supervisory Patent Examiner, Art Unit 2622